

U.S.S.N.: 09/699,003  
Filed: October 26, 2000  
AMENDMENT

### Remarks

#### Consideration of Prior Art on PTO 1449

The examiner's consideration of the art listed on the previously submitted PTO 1449 forms is greatly appreciated.

#### Related Application and Potential Declaration of Interference

Applicant's related application, U.S.S.N. 09/709,045, is being examiner by Lorraine Spector. This application, with minor amendments, is ready to proceed into an interference with U.S. Patent No. 6,379,708 to Howell, et al. Terminal Disclaimers have been filed in this application over the claims in U.S.S.N. 09/709,045. The examiner is earnestly requested to contact Examiner Spector to coordinate prosecution of the two cases.

#### Rejections under 35 U.S.C. 103

Claims 1-4, 8, 12, and 20 were rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 4,708,713 to Lentz in view of Selinsky, et al., Immunology 94:88-93 (1998). Claims 9, 10 and 16-19 were rejected over Lentz and Selinsky and further in view of U.S. Patent No. 5,523,096 to Okarma, et al. Claims 5 and 6 were rejected as obvious over Lentz and Selinsky in view of Feinman, et al. J. Immunol. 138(2):635-640 (1987). Claims 1-4, 5, 6, 9-10, 12 and 16-20 were rejected as obvious over Selinsky and Van Zee, et al. (applicant has still not been able to identify this citation) in combination with Lentz and U.S. Patent No. 6,017,527 to Maraskovsky. These rejections are respectfully traversed. It is noted that while the examiner has stated no citation is required since the references were previously made of record, the undersigned has not been able to determine the correct citations.

As previously noted, in the related application U.S.S.N. 09/709045, Examiner Spector has made of record the fact that Selinsky is not available as prior art to this

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application, having not been made available prior to the priority date. This application claims priority as a continuation of U.S.S.N. 09/316,226 filed May 21, 1999, which is a continuation in part of U.S.S.N. 09/083,307 filed May 22, 1998. Accordingly all rejections over Selinsky, alone or in combination with other art, should have been withdrawn.

However, solely to facilitate prosecution, enclosed is a copy of the executed Declaration under 37 C.F.R. 1.131 of Dr. Rigdon Lentz, showing that the invention was conceived prior to publication of Selinsky, and diligently reduced to practice by filing of an application immediately thereafter.

In the related application, U.S.S.N. 09/709,045, Examiner Lorraine Spector has indicated that Selinsky is not available as prior art since it was not received by the U.S. Patent Office until May 28, 1998, six days after the priority application was filed on May 22, 1998. Solely to facilitate declaration of an interference, and since the examiner has relied upon the Selinsky reference to support all of the rejections under 35 U.S.C. 103, enclosed is a Declaration by Dr. Lentz establishing that prior to publication of the Selinsky reference, he had conceived of the claimed method, disclosed it to the undersigned for purposes of filing a patent application, and that it was diligently reduced to practice upon filing of a patent application on May 22, 1998. This declaration should not be construed as an admission that there is no earlier disclosure of the subject matter nor that additional evidence may not be relied upon in an interference proceeding with U.S. Patent No. 6,379,708 to Howell, which is an issued U.S. patent, discloses and claims common subject matter.

**Rejection under 35 U.S.C. 112, first paragraph and objection to specification**


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Claim 1 has been rejected under 35 U.S.C. 112, first paragraph, and the specification objected to, on the basis that the application does not support the amended claim language "as compared to the amount prior to initiation of treatment." This rejection is respectfully traversed.

Claim 1 has been amended to delete the objected to language and refer instead to the specific language of the specification at page 8, lines 15-18, which state that "ultrapheresis is conducted over a period of time until a positive indication is observed. This is typically based on diagnostic tests which show that there has been some reduction in tumor size or which suggests tumor inflammation."

Allowance of claims 1-6, 8-10, 12 and 16-20 is earnestly solicited.

Respectfully submitted,

  
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